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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SONY COMPUTER ENTERTAINMENT
AMERICA LLC, a Delaware limited liability
company,

Plaintiff,

v.

ZOOMBA LDC;
WWW.SHOPPSJAILBREAK.COM; and DOES
1 through 100,

Defendants.

Case No. C-10-03909 VRW

**NOTICE OF MOTION AND MOTION FOR
AN ORDER SHORTENING TIME FOR
HEARING ON MOTION FOR EXPEDITED
DISCOVERY; MEMORANDUM OF POINTS
AND AUTHORITIES**

Date: TBD
Time: 10:00 a.m.
Dept.: Courtroom 6, 17th Floor
Judge: Hon. Vaughn R. Walker

NOTICE OF MOTION AND MOTION FOR AN ORDER SHORTENING TIME

TO ALL PARTIES AND COUNSEL: PLEASE TAKE NOTICE that, pursuant to Local Rule 6-1(b) and 6-3, Plaintiff SONY COMPUTER ENTERTAINMENT AMERICA LLC ("SCEA") hereby moves this Court for an Order Shortening Time to hear SCEA's Motion for Expedited Discovery filed concurrently with this Motion.

Local Rule 7-2(a) requires motions to be noticed no fewer than 35 days from the filing date. However, as set forth below, SCEA urgently needs expedited discovery to identify the entities responsible for distributing "PS Jailbreak" circumvention devices in violation of SCEA's rights under the federal copyright laws. SCEA will be severely prejudiced – and at risk of substantial harm – if its Motion for Expedited Discovery is not heard on a shortened basis.

Under the usual time table for noticed motions, SCEA's Motion for Expedited Discovery cannot be set for hearing until October 15, 2010, i.e., the first Thursday that is 35 days after SCEA's filing. October 15th is not early enough for SCEA's Motion for Expedited Discovery to be heard due to the exigent circumstances involving contributory infringement of its copyrighted works. But even that date is not available since, according to the Court's schedule of hearing dates published on the website, the Court is unavailable October 11 – 29, 2010. Therefore, absent an order shortening time, the *earliest* SCEA's motion could be heard is *November 4, 2010*, almost *two months* after SCEA filed its Motion for Expedited Discovery.

Accordingly, SCEA requests an Order Shortening Time so that its Motion for Expedited Discovery can be heard on September 16, 2010. This motion is based upon the Memorandum of Points and Authorities herein, the accompanying Declaration of Timothy R. Cahn In Support of Motion for An Order Shortening Time To Hear Motion on Expedited Discovery ("Cahn Decl."), [Proposed] Order Granting Motion for An Order Shortening Time To Hear Motion on Expedited Discovery, and any other evidence that may be presented at or before the hearing on this motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

On August 31, 2010, SCEA filed a complaint against Defendants Zoomba LDC, ShopPSjailbreak.com, and Doe Defendants (collectively, “Defendants”), based on their online marketing and distribution of unlawful devices known as the “PS Jailbreak” via the website at www.shoppsjailbreak.com. As set forth in the Complaint and SCEA’s Motion for Expedited Discovery, the devices circumvent the technological security measures in the PlayStation3® computer entertainment system (“PS3® System”) and facilitate piracy of video game software, in violation of the Copyright Act, 17 U.S.C. § 501, *et seq.*, including the Digital Millennium Copyright Act, 17 U.S.C. § 1201, *et seq.* (“DMCA”).¹

With the Complaint, SCEA is seeking to expeditiously stop the parties responsible for distribution of these illicit devices in the United States, including California.² However, the individuals behind the corporate defendants are attempting to conceal their identities by, among other things, using online “privacy services” and registering their websites with a private domain service. Cahn Decl., ¶¶3-4, Exhs. B, C. Accordingly, SCEA is seeking leave to take targeted, expedited discovery in order to: (1) promptly identify the culpable parties and their activities so that SCEA can seek appropriate, effective injunctive relief; and (2) promptly determine the locations of the “PS Jailbreak” devices before they are shipped to consumers. SCEA’s request for discovery on an expedited basis is warranted because *Defendants are currently announcing receipt of a “large quantity” of “PS Jailbreak” devices and are accepting online orders on their website as the “authorized” U.S. distributor.* Cahn Decl., ¶5, Exh. D. The situation involving the “PS Jailbreak” devices is also very serious in that the software from the devices is rapidly being copied and distributed on the Internet. *Id.*

¹ SCEA has also brought claims for federal trademark infringement and unfair competition, and state unfair competition.

² The Federal Court of Australia has enjoined the sale and distribution of the “PS Jailbreak” devices in Australia. Cahn Decl., ¶2, Exh. A.

at ¶6, Exh. E.

II. SCEA WILL BE SEVERELY PREJUDICED AND IS AT RISK OF SUBSTANTIAL HARM IF AN ORDER SHORTENING TIME TO HEAR ITS MOTION FOR EXPEDITED DISCOVERY IS NOT GRANTED

Time is of the essence. Accordingly, through its Motion for Expedited Discovery, SCEA seeks to promptly identify culpable parties and the location of the “PS Jailbreak” devices so that it can take appropriate action to stop the illegal activity. Due to the urgent nature of this matter, SCEA’s request for expedited discovery is only effective if it is heard on a shortened time table. Indeed, SCEA will be severely prejudiced, and is at risk of substantial harm, if its Motion for Expedited Discovery is not heard on a shortened basis because the infringers will distribute the illicit devices – as advertised on the www.shoppsjailbreak.com website – while SCEA must wait to be heard on its request to discover the identities of those infringers. Moreover, hearing SCEA’s Motion for Expedited Discovery on a shortened basis serves the interest of judicial efficiency as the culpable parties will be timely identified early on in the action.

SCEA satisfies the requirements for an order shortening time. Pursuant to Local Rule 6-3(a) (1)-(6), the accompanying Declaration of Timothy R. Cahn (¶¶7-13) sets forth the following: (1) the reasons for the requested change in time, with particularity; (2) a description of efforts that SCEA has made to obtain a stipulation to the change in time; (3) identification of the substantial harm or prejudice that would occur if the Court does not grant the request for a change in time; (4)(i) a description of SCEA’s compliance with Civil L. R. 37-1(a); (4)(ii) a description of the nature of the underlying dispute that will be addressed in the motion and a summary of each party’s position on the matter; (5) disclosure of all previous time modifications in the case, whether by stipulation or Court order; and (6) any effect the requested time modification would have on the schedule for the case.

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1 **III. PROPOSED SCHEDULE ON MOTION FOR EXPEDITED DISCOVERY**

2 SCEA requests that this Court adopt the following briefing and hearing schedule for
3 the Motion for Expedited Discovery:

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5 Last Day to File Opposition: September 13, 2010
6 Last Day to File Reply: September 15, 2010
7 Hearing: September 16, 2010, at 10:00 a.m. or as
soon as possible thereafter.

8 **IV. CONCLUSION**

9 For the foregoing reasons, SCEA respectfully requests that the Court grant its Motion
10 for an Order Shortening Time and adopt its proposed briefing schedule.

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12 DATED: September 7, 2010

Respectfully submitted,

13 TOWNSEND AND TOWNSEND AND CREW LLP

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15 By: /s/ Timothy R. Cahn
16 JAMES G. GILLILAND, JR.
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18 Attorneys for Plaintiff
19 SONY COMPUTER ENTERTAINMENT AMERICA LLC

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